

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: STRYKER LFIT V40)	MDL No. 17-md-2768-IT
FEMORAL HEAD PRODUCTS)	
LIABILITY LITIGATION)	
)	
This Document Relates To:)	
)	SHORT FORM
All Cases)	COMPLAINT AND
)	JURY DEMAND
)	
)	
JAMES M. SMITH, and)	This Document Relates to:
CINDY F. SMITH,)	Case No.: 1:17-cv-10607-IT
)	
PLAINTIFFS,)	
)	
v.)	
)	
HOWMEDICA OSTEONICS CORP.)	
)	
DEFENDANTS.)	
)	

1. Plaintiffs, James M. Smith and Cindy F. Smith, state and bring this civil action in MDL No. 2768, entitled *In Re: Stryker LFIT V40 Femoral Head Products Liability Litigation*. Plaintiffs are filing this Short Form Complaint as permitted by Pretrial Order #2 dated October 11, 2017 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, James M. Smith, is a resident and citizen of the State of Minnesota and claims damages as set forth below.

3. Plaintiff's Spouse, Cindy F. Smith, is a resident and citizen of the State of

Minnesota, and claims damages as set forth below.

4. Venue of this case is appropriate in the United States District Court, District of Minnesota. Plaintiff states that but for the Order permitting directly filing into the District of Massachusetts pursuant to Pretrial Order No. 2, Plaintiff would have filed in the United States District Court, District of Minnesota. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

5. Plaintiff brings this action *[check the applicable designation]*:

 X On behalf of himself/~~herself~~;

 In a representative capacity as the of the having been duly appointed as the by the Court of . A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent. *[Cross out if not applicable.]*

FACTUAL ALLEGATIONS

Allegations as to **Left-sided** Implant/Explant Surgery(ies):

6. Plaintiff was implanted with an LFIT Anatomic CoCr V40 Femoral Head on his left hip on or about June 19, 2007, at the St. Cloud Hospital, 1406 6th Avenue North in St. Cloud, Minnesota by Dr. Joseph Nessler.

7. Plaintiff was implanted with the following femoral stem during June 19,

2007 surgery:

 X Accolade TMZF
 Accolade II
 Other _____(Femoral Stem)

8. Plaintiff had the left femoral head at issue explanted on February 23, 2015, at St. Cloud Hospital, 1406 6th Avenue North in St. Cloud, Minnesota by Dr. Joseph Nessler.

ALLEGATIONS AS TO INJURIES

12. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO ~~HERSELF~~/HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 SURVIVORSHIP ACTION
 X ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):

 X LOSS OF SERVICES
 X LOSS OF CONSORTIUM

13. Plaintiff has suffered injuries as a result of implantation of the Device(s) at issue manufactured by the Defendants as shall be fully set forth in Plaintiff's anticipated Amended Complaint, as well as in Plaintiff's Fact Sheet and other responsive documents provided to the Defendant and are incorporated by reference herein.

14. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

15. Plaintiff(s) could not have known that the injuries he/she suffered were as a result of a defect in the Device(s) at issue until after the date the Device was recalled from the market and the Plaintiff(s) came to learn of the recall.

16. In addition, Plaintiff could not have known that he/she was injured by excessive levels of chromium and cobalt until after the date he/she had his/her blood drawn and he/she was advised of the results of said blood-work and the fact that those blood work abnormalities were attributable to a defect in the Device(s) at issue.

CASE-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

17. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

- | | |
|--------------|--|
| <u> X </u> | COUNT I - NEGLIGENCE; |
| _____ | COUNT II - NEGLIGENCE PER SE; |
| <u> X </u> | COUNT III - STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN; |
| <u> X </u> | COUNT IV - STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT; |
| <u> X </u> | COUNT V - STRICT PRODUCTS LIABILITY- FAILURE TO WARN; |
| _____ | COUNT VI - BREACH OF EXPRESS WARRANTY; |
| <u> X </u> | COUNT VII- BREACH OF WARRANTY AS TO MERCHANTABILITY; |
| <u> X </u> | COUNT VIII - BREACH OF IMPLIED WARRANTIES; |

_____	COUNT IX - VIOLATION OF MASSACHUSETTS CONSUMER PROTECTION ACT
_____	COUNT X – VIOLATION OF CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW;
_____	COUNT XI - NEGLIGENT MISREPRESENTATION
<u> X </u>	COUNT XII - LOSS OF CONSORTIUM
_____	COUNT XIII – UNJUST ENRICHMENT
_____	COUNT XIV – WRONGFUL DEATH
<u> X </u>	COUNT XV- PUNITIVE DAMAGES

In addition to the above, Plaintiff(s) assert the following additional causes of
action under applicable state law:

 N/A

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For all applicable statutory damages of the state whose laws will govern this action;
3. For an award of attorneys' fees and costs;
4. For prejudgment interest and costs of suit;
5. For restitution and disgorgement of profits; and,
6. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff(s) hereby demand(s) a trial by jury as to all claims in this action.

Date: October 13, 2017

Respectfully submitted,

/s/ C. Calvin Warriner, III
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